All Malayan Estates Staff Union v Golden Hope Plantation Bhd & Anor

HIGH COURT (KUALA LUMPUR) — ORIGINATING MOTION NO R2–25–62–92
WAN ADNAN J
3 MAY 1994

Labour Law *— Industrial Court — Jurisdiction — Whether confined to reference made by Minister — Industrial Relations Act 1967 ss 2 & 30(1) — Industrial Court Rules 1967 s 9*

Labour Law *— Termination benefits — Whether employees entiled to benefits — Whether there was change in employer — Whether Industrial Court's finding was perverse*

A dispute arose between Golden Hope Plantation Bhd ('the Plantation company') and the All Malayan Estates Staff Union ('the Union') over the relocation of employees of the Plantation company's latex factory, ie Golden Hope Latex Sdn Bhd ('the Latex company') from Petaling, Selangor to Dusun Durian Estate, Banting, Selangor. The Union contended that the relocation had resulted in the employees having to bear increased cost and expenses, thereby reducing the employees' take-home pay, which was an unfair labour practice.

The Industrial Court held that the employees of the Latex company who were relocated were entitled to a school children's education and transport allowance but not other transport and food allowances. However, they were not entitled to termination and lay-off benefits under reg 8 of the Employment (Termination and Lay-Off Benefits) Regulations 1980 as the Latex company remained their employer upon relocation.

Counsel for the Union contended that: (i) the Industrial Court had committed an error on jurisdiction when it held that it had no jurisdiction to adjudicate on the issue of transfer, as the subject matter of the Minister's reference only concerned relocation; and (ii) the decision of the court that the Latex company continued to be the employer was perverse and unsupported by documentary evidence. The Union applied for an order of certiorari to quash the Industrial Court's award.

Held, dismissing the application:

(1) The jurisdiction of the Industrial Court is limited to the dispute referred to it. It has no power or authority to deal with a matter outside the reference. The reference determines the jurisdiction of the court and the scope and nature of issues referred to it. Since the Minister's reference concerned the relocation of the employees, the issue of transfer was outside the scope of the reference. Therefore, the Industrial Court had correctly confined itself to the issue of relocation.

(2) Although some documents before the court showed that the Plantation company was the employer, the Industrial Court had accepted the explanation that it was a mistake and made a finding that the Latex company remained the employer of the employees. The finding was not perverse or irrational as the court had made a finding of fact based on all the evidence before it. Therefore, the Industrial Court had not erred in finding that the issue of termination and lay-off benefits did not arise.

[Bahasa Malaysia summary

Suatu pertikaian telah timbul di antara Golden Hope Plantation Bhd ('syarikat Perladangan itu') dan All Malayan Estates Staff Union ('Kesatuan itu') mengenai penempatan semula pekerja kilang lateks syarikat Perladangan itu, iaitu Golden Hope Latex Sdn Bhd ('syarikat Lateks itu') dari Petaling, Selangor ke Dusun Durian Estate, Banting, Selangor. Kesatuan itu menegaskan bahawa penempatan semula itu telah mengakibatkan pekerja terpaksa menanggung kos dan perbelanjaan yang lebih tinggi, dan dengan itu mengurangkan gaji bawa pulang mereka, yang merupakan suatu amalan kerja yang tidak adil.

Mahkamah Perusahaan memutuskan bahawa pekerja syarikat Lateks itu yang telah ditempatkan semula berhak mendapat suatu elaun pendidikan dan pengangkutan untuk anak mereka yang bersekolah tetapi bukan elaun pengangkutan dan makanan yang lain. Bagaimanapun, mereka tidak berhak mendapat faedah penamatan dan rentikerja sentara di bawah peraturan 8 Peraturan-Peraturan (Faedah-Faedah Penamatan dan Rentikerja Sentara) 1980 kerana syarikat Lateks itu tetap menjadi majikan mereka selepas penempatan semula itu.

Peguam pihak Kesatuan itu menegaskan bahawa: (i) Mahkamah Perusahaan telah melakukan kesilapan mengenai bidang kuasa apabila membuat keputusan bahawa ia tidak mempunyai bidang kuasa untuk memutuskan isu pemindahan, kerana isi perkara perujukan Menteri hanya berkenaan dengan penempatan semula; dan (ii) keputusan mahkamah bahawa syarikat Lateks itu tetap menjadi majikan pekerja itu adalah bertentangan dengan dan tidak disokong oleh keterangan dokumentar. Kesatuan itu telah memohon untuk suatu perintah certiorari untuk membatalkan award Mahkamah Perusahaan itu.

Diputuskan, menolak permohonan itu:

(1) Bidang kuasa Mahkamah Perusahaan terhad kepada pertikaian yang dirujukkan kepadanya. Ia tidak mempunyai kuasa untuk memutuskan suatu perkara di luar perujukan itu. Perujukan itu menentukan bidang kuasa mahkamah dan skop serta jenis isu yang dirujuk kepadanya. Memandangkan bahawa perujukan Menteri itu berkenaan dengan penempatan semula pekerja, isu pemindahan itu terletak di luar skop perujukan itu. Oleh demikian,

Mahkamah Perusahaan telah menghadkan dirinya kepada isu penempatan semula dengan betul.

(2) Walaupun beberapa dokumen di hadapan mahkamah menunjukkan bahawa syarikat Perladangan itu merupakan majikan pekerja, Mahkamah Perusahaan telah menerima penjelasan bahawa itu adalah suatu kesilapan dan membuat keputusan bahawa syarikat Lateks itu tetap menjadi majikan pekerja. Keputusan itu bukan bertentangan dengan keterangan ataupun tidak rasional kerana mahkamah telah membuat suatu pendapat mengenai fakta berdasarkan kesemua keterangan di hadapannya. Oleh itu, Mahkamah Perusahaan tidak membuat kesilapan apabila membuat keputusan bahawa isu faedah penamatan dan rentikerja sentara tidak timbul.]

[*Editorial Note*: The applicant has appealed to the Supreme Court vide Civil Appeal No 02–635–93.]

Notes

For cases on the Industrial Court's jurisdiction, see 8 *Mallal's Digest* (4th Ed) paras 714–730; [1991] Mallal's Digest 1284–1285; and [1992] Mallal's Digest 1162–1165.

For cases on termination benefits, see 8 *Mallal's Digest* (4th Ed) paras 623–626; 638; [1990] Mallal's Digest 729; and [1991] Mallal's Digest 1300.

Case referred to

1 *Enesty Sdn Bhd v Transport Workers Union & Anor* [1986] 1 MLJ 18 (refd)

Legislation referred to

Employment Act 1955 s 12
Industrial Relations Act 1967 ss 2, 30(1)
Employment (Termination and Lay-Off Benefits) Regulations 1980 reg 8
Industrial Court Rules 1967 s 9

B Lobo (*Lobo & Associates*) for the applicant.
P Jayasingam (*Shearn Delamore & Co*) for the respondents.

Wan Adnan J: This is an application for an order of certiorari to quash the award of Industrial Court No 88 of 1992 dated 20 May 1992.

There was a dispute between Golden Hope Plantation Bhd ('the Plantation company') and the All Malayan Estates Staff Union ('the Union') over the relocation of employees of the company's latex factory, ie the Golden Hope Latex Sdn Bhd ('the Latex company') from Petaling, Selangor to Dusun Durian Estate, Batu 10, Banting, Selangor.

The facts are clearly set out in paras 3, 4, 5 and 6 of the award and are reproduced hereunder:

3 The facts leading to the dispute are that on 9 June 1989, the Latex company, formerly known as HMPB Latex Sdn Bhd gave a general note to all its employees, advising them that:

> 'The existing land occupied by HMPB Latex Sdn Bhd at Mukim Petaling had been sold to HMPB Property Development Sdn Bhd effective from 26 June 1987. We have been served notice to cease all existing operations and to vacate the said land/premises on or before 15 September 1989. As a result, the existing facilities and accompanying employees will be relocated as follows:
>
> | Present location | Relocation to |
> |---|---|
> | (1) Clerical staff based at Group Office/Accounts, Petaling, Selangor | HMPB Latex Sdn Bhd
Tingkat 16, Menara PNB
201–1, Jalan Tun Razak
50400 Kuala Lumpur |
> | (2) Employees based at QCTL, Petaling, Selangor (except the watchman, gardeners, general worker and driver) | HMPB Latex Sdn Bhd
QCTL, Dusun Durian Estate
10th mile, Banting
42700 Banting, Selangor |
>
> Individual employees will be advised on the actual date of the relocation in due course.'

4 On 5 July 1989, the Latex company gave each of the affected employees a relocation letter that they should report to Encik Abdul Haris for duty on 16 September 1989 at QCTL Dusun Durian Estate, Banting, Selangor. It also advised them to vacate their quarters at Petaling if they were provided with one. On 7 July 1989, each of the affected employees wrote individually to the management of the Latex company a letter of which a sample copy was as below:

> 'Dear Sir
>
> Relocation HMPB Latex Sdn Bhd QCTL
>
> Your letter dated 5 July 1989 regarding the above matter refers.
>
> Please be informed that I have put in 25 years of service in QCTL Petaling, and now you are suddenly relocating my place of work to Banting, Selangor, whereby uprooting my family and causing me much hardship. However, as advised I agree to continue my employment in Banting under the existing terms and conditions of service as for the MAPA/AMESU Agreement 1988, which includes amongst other benefits, furnished housing, free water and free electricity.
>
> I seek your confirmation on same.'

On 28 July 1989, the management gave its confirmation. On 11 August 1989, six of the affected employees appealed to the management on humanitarian grounds that they be allowed to remain in the residential quarters in Petaling until the school term for their children attending school came to an end. And on 6 September 1989, the management advised each of the employees by letter that the relocation scheduled for 16 September 1989 was to be deferred to 1 November 1989.

5 In the meanwhile, on 6 July 1989, the Union wrote a letter to the management stating that:

> 'We are not aware of such a relocation exercise by the company and we feel it is wrong on the part of the company for not informing the Union on this matter.
>
> We shall appreciate if you will kindly advise us on this matter without further delay.'

On 28 July 1989, the management gave a reply to the Union as follows:

> 'Dear Sir
>
> Relocation
>
> We refer to your letter of 6 July 1989.
>
> There appears to be a misunderstanding. On our part, we displayed a general notice of the impending relocation followed by letters to the individuals as early as possible notifying them of the move.
>
> Having noted the article on grievance procedure in the MAPA/AMESU Agreement 1988, we thought that if any staff members had any matter to raise on the exercise, they could either raise it directly with us or seek redress under that article and thus did not inform you.'

On 19 August 1989, the Union sought a meeting with the management on its relocation exercise. A meeting was held on 29 September 1989 and the outcome was made known to the Union on 29 September 1989 as follows:

> 'Dear Sir
>
> Relocation of QCTL
>
> We refer to our discussion on 12 September 1989 on the various matters raised in the presence of your Mr Lingam, Encik Mohd Audong of MAPA and our Mr Melkiau and Mr Chan and would advise as follows:
>
> (1) Extension of relocation date
>
> After due consideration of appeal from the staff for postponement of the relocation date, we have deliberated the matter with all concerned and now decided to postpone the date of relocation from 16 September 1989 to 1 November 1989. All staff have already been notified of this.
>
> (2) Housing
>
> As advised, there is no accommodation available at work place. As such, they will be paid housing allowances in accordance with the MAPA/AMESU Agreement. However, in view of the appeal made by staff to consider providing the vacant accommodation of Sungei Sedut Estate, it is agreed to provide seven clerical staff and five non-clerical staff with furnished houses, which are currently vacant.
>
> (3) Transport
>
> No transport allowance will be given for travel between the staff quarters and place of work. If the staff do not wish to live in the quarters, they may opt for outside accommodation in which event

they will be paid a housing allowance in accordance with the MAPA/AMESU Agreement. A

(4) Rented accommodation

We have given due consideration to your request to provide rented accommodation to all staff who are not provided with houses, but regret to advise that we are unable to accede to your request. B

(5) Education allowance

As currently all staff are not entitled to this allowance, it will therefore remain unchanged.

(6) Transfer of personal effects C

We will provide all necessary assistance in transporting personal household effects for all staff.

(7) Purchase of low cost houses

We note your request to grant consideration to staff for purchase of low cost houses at discounted prices. We can only advise that the staff will be informed appropriately if and when a policy is made on this matter. D

(8) Halimah A Halil

Cik Halimah had expressed her intention to continue employment in her letter of 7 July 1989. As such and as her service was not terminated, the question of retrenchment benefit therefore does not arise.' E

Relocation was carried out on 1 November 1989. Out of this relocation exercise there now exists a dispute between the Latex company and the Union because the Union's contention, as appeared in its statement of case, that relocation carried out by the Latex company had resulted in the employees having to bear increased cost and expenses, thereby reducing the employees' take-home pay. It also said that: F

'Such unilateral reduction and/or detriment to the said employees without any compensation/reimbursement is an unfair labour practice, contrary to equity and good conscience and ought to be struck down as such.' G

The Union then prayed for an order that the following be paid to the employees effective from date of relocation to Banting:

'(a) School children's education and transport allowance to the said employees with school-going children; H
(b) Transport be provided or an appropriate transport allowance be paid to the said employees who are required to travel from their quarters/homes to their place of work at the laboratory of the company located at Dusun Durian Estate;
(c) Breakfast and lunch allowance to the said employees who have been relocated to the Banting site.' I

6 The Latex company, however, denied that the relocation of the quality control laboratory from Petaling, Selangor to the Dusun Durian Estate site

at Banting had resulted in any reduction in the employees' take-home pay, as they (the employees) continued to be placed on the same terms and conditions of service in accordance with the MAPA/AMESU Agreement 1988. It also denied that it had in any manner acted to the detriment of the said employees or was guilty of unfair labour practice as the employees:

> '... are not entitled to a school children's education/transport allowance or for the provision of free transport to and from their respective homes or in lieu thereof, for a transport allowance or for a breakfast and lunch allowance as demanded by the Union or at all under the terms of the collective agreement in force between the parties to wit, the MAPA/AMESU 1988 Collective Agreement.'

It then prayed for an order that the Union's claim be dismissed.

The Industrial Court decided that the employees of the Latex company who were relocated were entitled to a school children's education and transport allowance (if they had school-going children) but they were not entitled to a transport allowance from quarters to place of work or breakfast and lunch allowance.

Before me, the learned counsel for the Union contended that the Industrial Court had committed an error on jurisdiction when it said in para 9 of the award as follows:

> We agree with the company's submission that the court has no jurisdiction to adjudicate on the issue of transfer, as the subject matter of the Minister's reference is clearly on relocation. Our jurisdiction is limited to the dispute so referred to us and we can't go beyond the terms of reference. Thus, we can only have jurisdiction to adjudicate on 'relocation' and nothing else.

In *Enesty Sdn Bhd v Transport Workers Union & Anor*,[1] the Supreme Court said [at p 21]:

> Under the Industrial Relations Act 1967, a dispute on jurisdiction can occur at two stages in proceedings before the Industrial Court. The first is at the initial stage affecting the hearing of the reference or complaint itself when reference is made by the Minister under ss 20(3), 26(1) or when a complaint is made under s 56(1); and second is at the final stage affecting the award.

The learned counsel contended that the court had erred at the first stage. It was his contention that the Minister's reference was not conclusive in itself. It was not sacrosanct. It was only an administrative vehicle to bring the case to court. The court wrongly held that it did not have jurisdiction.

The heading of the reference reads as follows:

> Rujukan ke Mahkamah Persekutuan oleh YB Menteri Sumber Manusia mengenai pertikaian di antara Golden Hope Plantations Bhd dengan All Malayan Estates Staff Union mengenai penempatan semula kakitangan QCTL dari HMPB Latex Sdn Bhd, Petaling Jaya ke Ladang Dusun Durian, Selangor.

Section 30(1) of the Industrial Relations Act 1967 ('the Act') reads as follows:

> The Court shall have *power* in relation to a *trade dispute referred to it* or in relation to a reference to it under section 20(3), to make an award (including an interim award) relating to all or any of the issues. (Emphasis added.)

Under s 2 of the Act 'award' 'means an award made by the Court in respect of any trade dispute or *matter referred to* it or any decision or order made by it under this Act'. (Emphasis added.)

Section 9(1) and (3) of the Industrial Court Rules 1967 provides as follows:

> (1) Upon a case being brought before the Court, the Registrar shall immediately serve notice in Form H on one or other of the parties as the President shall direct to submit to the Court a Statement of Case.
> (3) Such Statement of Case shall be confined to the issues which are included in the Case referred to the Court by the Minister or in the matter required to be determined by the Court under the provisions of the Act and shall contain:
>
> (a) a statement of all relevant facts and arguments;
> (b) particulars of decisions prayed for;
> (c) an endorsement of the name of the first party and of his address for service; and
> (d) as an appendix or attachment, a bundle of all relevant documents relating to the case.

1 *The Law of Industrial Disputes* by OP Malhotra at p 19 states as follows:

> The Industrial Tribunal is not a court of general and residuary jurisdiction, but is a tribunal with specific jurisdiction circumscribed by the terms of an order of reference. The scheme of the Act is that a tribunal constituted under the Act has to determine the dispute referred to it. In other words unlike an ordinary civil court, a tribunal has no general or inherent jurisdiction in any class of matters. It can have no power or authority whatever to deal with a dispute beyond that which can be derived from or traced to ss 7, 7A, 10, 14 and 15 of the Act. Before the Tribunal can acquire jurisdiction in any particular case, the 'industrial dispute' must be referred to it by the 'appropriate Government' and its jurisdiction is limited to the dispute so referred. Section 10(4) permits the Tribunal to decide only disputes or points referred to it and matters incidental thereto and the tribunal cannot go beyond the terms of reference.
>
> The functions of a tribunal are quasi-judicial but it is not a civil court. It has not the inherent power to decide any of the disputes raised by the parties in their pleadings. Its jurisdiction is limited and restricted only to the issues referred to it by the appropriate Government by an order of reference. In other words, the Tribunal has to function within the limits imposed upon it by the statute and has to act according to its provisions. In adjudicating upon an 'industrial dispute', the Tribunal cannot arrogate to itself powers which the legislature alone can confer or do something which the legislature has not permitted to be done. The Tribunal acquires jurisdiction to adjudicate upon an 'industrial dispute' only after it has been referred to it. In other words, without such a reference, the Tribunal does not get any such jurisdiction to adjudicate upon any dispute.

From the above references it is my view that the jurisdiction of the Industrial Court is limited to the dispute referred to it. It has no power or authority whatsoever to deal with a matter outside the Reference. It is the Reference that determines the jurisdiction of the court. It is the Reference that determines the scope and nature of issues referred to the court. The court cannot go beyond the subject matter referred to it.

In the present case, the Minister's reference was 'mengenai penempatan semula' (relocation) of the employees. The issue of transfer was outside the scope of the reference. In my view the Industrial Court had correctly confined itself to the issue of relocation.

The other main ground of this application is in respect of the finding of the court in paras 14 and 15 of the award which is as follows:

> 14 In the light of our observation, we hold that: (1) the employees were relocated from Banting; and (2) upon relocation, the Latex company remained their employer.
>
> 15 In view of our finding, the issue of attracting s 12(3)(b) of the Employment Act 1955, read with reg 8 of the Employment (Termination and Lay-Off Benefits) Regulations 1980 does not arise.

Section 12(3)(b) of the Employment Act 1955 reads as follows:

> Notwithstanding anything contained in subsection (2), where the termination of service of the employee is attributable wholly or mainly to the fact that —
>
> ...
>
> (b) the employer has ceased or intends to cease to carry on the business in the place at which the employee was contracted to work;
>
> ...
>
> the employee shall be entitled to, and the employer shall give to the employee, notice of termination of service, and the length of such notice shall not be less than that provided under subsection (2)(a), (b) or (c), as the case may be, regardless of anything to the contrary contained in the contract of service.

Regulation 8 of the Employment (Termination and Lay-Off Benefits) Regulations 1980 provides as follows:

> (1) Where a change occurs (whether by virtue of a sale or other disposition or by operation of law) in the ownership of a business for the purposes of which an employee is employed or of part of such business, the employee shall not be entitled to any termination benefits payable under these Regulations, if within seven days of the change of ownership, the person by whom the business is to be taken over immediately after the change occurs, offers to continue to employ the employee under terms and conditions of employment not less favourable than those under which the employee was employed before the change occurs and the employee unreasonable refuses the offer.
>
> (2) If the person by whom the business is to be taken over immediately after the change occurs does not offer to continue to employ the employee in accordance with paragraph (1), the contract of service of the employee shall be deemed to have been terminated, and consequently, the person by whom the employee was employed immediately before the change in ownership occurs and the person by whom the business is taken over immediately after the change occurs shall be jointly and severally liable for the payment of all termination benefits payable under these Regulations.

The learned counsel contended that the decision of the court that the Plantation company was not the employer but that the Latex company continued to be the employer was perverse and unsupported by documentary evidence. Consequently, the finding of the court in para 15 of the award to the effect that Reg 8 did not arise was also perverse. According to the learned counsel, a number of documents before the court showed that the

employees were on transfer from the Latex company to the Plantation company.

From para 10 of the award it is clear that the court had asked itself the correct question. It asked:

> Are the employees on relocation from Petaling, to Dusun Durian Estate, Banting, Selangor? Or are they on transfer from the Latex company, Petaling, to the Plantation company in Dusun Durian Estate, Banting?

All the documents were before the court. Admittedly, some of the documents showed that the Plantation company was the employer. The court considered this. The court also considered the explanation given by the company that the citing of the Plantation company as the employer on those documents was a mistake and that the same had been rectified.

The court accepted the explanation that it was a mistake and made a finding that the Latex company remained the employer of the employees. In my view the finding is not perverse or irrational. All the evidence was before it and it made a finding of fact.

Therefore, I am also of the view that the Industrial Court had not erred in finding that the issue of attracting s 12(3)(b) of the Employment Act 1955 read with Reg 8 of the Employment (Termination and Lay-Off Benefits) Regulations 1980 did not arise.

I dismissed the application with costs.

Application dismissed.

Reported by Anne Khoo